IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.349 of 2006
Date of decision:26.10.2006

M/s. The Awagaman Cargo Carriers (P) Limited, Chandigarh

....Appellant

versus

Commissioner of Income Tax-II, Bassi Building Sector 17, Chandigarh and another.

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. M.R.Sharma, Advocate, for the appellant.

JUDGMENT:

This appeal has been preferred by the assessee against the order dated 10.10.2005 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh in ITA No.1123/Chandi/2004, for the assessment year 2002-03, proposing following substantial questions of law:-

"i) Whether in the facts and circumstances of the case the orders (Annexure P.1 and (Annexure P.2) are legally sustainable?

ii) Whether in the facts and circumstances of the case the Tribunal is correct in law in setting aside the order of the First Appellate Authority and remanding the matter to the file of the respondent No.2 for re-examination?

(iii) Whether in the facts and circumstances of the case the order setting aside the order of the First Appellate Authority is perverse and accordingly is legally sustainable, the same being based on mere presumptions and surmises and mere difference of opinion which cannot form the basis of adjudication?

(iv) Whether in the facts and circumstances of the case, the order of the Assessing Officer applying rate of 2% for the purpose of deduction of tax at source being payment to the sub contractor is legally sustainable?"

The Assessing Officer levied penalty under section 201 of the Income Tax Act, 1961 (for short, 'the Act') for default in respect of tax deducted at source (TDS) from freight payment. The CIT(A) set aside the penalty on the ground that the assessee had deducted TDS in respect of payments exceeding Rs.20,000/- but since in most of the cases, freight charges were below the said amount, Section 194 of the Act for deduction of TDS was not attracted. Amounts of Rs.4,81,294/- and Rs.9,34,945/- respectively had been deducted for the assessment years 2001-02 and 2002-03.

The Tribunal found that the CIT(A) had ignored the observations of the Assessing Officer that details of parties to whom freight payments had been made, were not furnished for verification and the CIT (A) only examined cases where returns had been furnished in Form No.26-C. The matter, thus, required re-consideration. Accordingly, the case was remanded to the Assessing Officer for fresh adjudication.

Since the case has merely been remanded and the reason for remand cannot be held to be arbitrary and without any basis, we are unable to hold that the questions proposed require consideration by this Court at this stage.

The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

October 26, 2006
'gs'

(Rajesh Bindal)
Judge